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UNCLAS SECTION 01 OF 02 BRUSSELS 000790

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DEPT FOR EUR/UBI and EEB/TPP/IPE  
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TAGS: [EINT](#) [KIPR](#) [BE](#)  
SUBJECT: BELGIAN NEWSPAPER GROUP SUES GOOGLE OVER COPYRIGHTS

11. (U) SUMMARY. On February 13, a Belgian court upheld an earlier ruling against Google in a copyright dispute over news article headlines, excerpts, and links on its Google Belgium and Google News Belgium websites. The suit was brought by Copiepresse, a newspaper group representing 17 Belgian newspapers including Le Soir and La Libre Belgique. The group claimed that its articles, editorials, and contributions hold significant value and that the technology employed by Google's search services compromises their content by allowing web users to avoid archived article charges normally levied by the publishers' own websites. The February decision reiterated the previous court order for removal of links to the group's content, but in a victory for Google, lowered the fine for each day's delay in removing the content to 25,000 euros per day from the original 1,000,000 euros per day. Google maintains Copiepresse's legal action was unwarranted because sufficient extra-legal remedies to their complaints exist and because the contested content is only offered in excerpted form, which according to Google constitutes "fair use."

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CACHE-ING TECHNOLOGY AT ISSUE  
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12. (U) When Copiepresse originally brought suit it was joined by two groups representing Belgian photographers, SOFAM and SCAM; those two groups have since settled with Google. Google argues that Copiepresse is taking issue over a technology that is inherent to how internet search engines operate. When searching for a news story or any website on Google, a user is returned results based on keywords and tags placed within websites by their designers. According to Google, content publishers and their web designers more often complain about exclusion from access to 8 million Google users than inclusion on a Google search for a particular keyword. The deeper issue is that Google also offers an alternative to simply clicking on a link to a website and visiting its live content. Google's engine continuously and proactively crawls the internet, copies, and then temporarily stores websites in its "cache." This allows users to click on the cached link of a website instead of the active hyperlink, to access the copy Google has made, which is useful in case the live version of the site is experiencing technical problems or a user wants to see a historic version of tnt voval, and does not employ the cache feature, although many news articles can still be found, if no action is taken by the publisher, outside of Google News where they could possibly be cached. Google estimates that 95 percent of its news users do not navigate outside of Google News.

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COMPANY POSITIONS  
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14. (U) Google argues that its cache feature is relatively unknown and is primarily used by web historians and archivists. It stresses the two methods of removal of content, requests from publishers and the automated tagging system, and argues that the public benefits from historical recording of this type. Google also states that it forwards for free very valuable web traffic to publisher's websites where users can be charged for subscriptions or content access. Copiepresse claims that the automated method of excluding their sites is insufficient, because this technique is not legally recognized, and suggests that Google should not be allowed to dictate its own terms of copyright law adherence.

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ISSUES STILL IN CONTENTION  
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15. (U) In response to the court order, Google removed any references to the plaintiffs' websites on all their Belgian search vehicles, such that if you typed "Le Soir" into Google.be, nothing, not even their homepage, comes back. Copiepresse claims that content is still appearing on other Google websites outside of Belgium and therefore, fines should still be accruing. Google views the ruling as binding only for its Belgian domains, Google.be, news.google.be, and so forth, such that the court decision will not affect how it operates its search or web crawling cache in general. Google continues to appeal the fines as well. While dismissing the idea of paying the group solely for the right to cache its sites, Google has expressed openness to licensing agreements that would allow its users more open and in-depth access to publishers' content.

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COMMENTS  
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16. (U) The persistence of Copiepresse in the legal arena over this issue may go beyond fulfilling its group members' interest in safeguarding their works, considering Google appears to have responded to the substance of their complaint. Whether Copiepresse will be awarded any damages is not clear. The group is also pursuing legal action against other search engines such as Yahoo and Microsoft. If no damages are imposed for possible past infringement, it would seem that Copiepresse could have obtained the same result - removing links to its publishers from Google - more cost-effectively by using mechanisms available within Google, i.e. asking Google to remove cache links to its sites, using anti-web crawling code, or entering negotiations with Google about revenue sharing through the hosting and syndication of premium and archived news content.

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